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OFFICE OF PETITIONS

In re Application of :
Lang, et al. :
Application No. 09/853,827 :
Filed: May 11, 2001 :
Attorney Docket No. 4989-009 :
Title: AUTOMATIC CONFIGURATION FOR :
PORTABLE DEVICES : DECISION REFUSING STATUS
UNDER 37 CFR 1.47(a)

This is in response to the petition under 37 CFR 1.47(a), filed January 29, 2002.

The petition under 37 CFR 1.47(a) is DISMISSED.

Rule 47 petitioner is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventors. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on May 11, 2001. On July 11, 2001, petitioner was mailed a "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted," requiring an executed oath or declaration and a surcharge for its late filing. This Notice set a two-month period for reply.

In reply, petitioner filed the instant petition (and fee) and paid the surcharge for late filing of the declaration. To make timely this reply, applicant obtained a two month extension of time and included a Certificate of Mailing dated November 13, 2001 (November 11 was a Sunday, November 12 was a federal holiday). Accompanying the petition was a declaration by Jennifer Rush, detailing the facts concerning co-inventors Lang's, Sharp's, and Adkins' refusal to sign the declaration.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor(s) cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 37 CFR 1.63; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor(s). The instant petition does not satisfy requirement (1).

As to item (1), the petition and accompanying evidence have been carefully considered. However, the declaration by Rush does not establish that the three non-signing inventors were presented with a copy of the application papers. Requiring that an inventor be presented with the application papers before a petition under 37 CFR 1.47 is granted "ensures that the inventor is apprised of the application to which the oath or declaration is directed."¹

The declaration by Rush and the accompanying cover letter do set forth that non-signing inventor Sharp was presented with "paperwork". However, it is not clear whether he was presented with the application papers (specification, claims, and drawings) or merely the declaration.

Moreover, with regard to non-signing inventors Lang and Adkins, Rush's declaration fails to establish that they were presented with any papers, much less the application papers. In the case of Lang, Rush's declaration only sets forth that he made an oral refusal to sign, without any averments that he was presented with the application papers.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 308-6916
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By hand: Crystal Plaza Four, Suite 3C23
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Telephone inquiries related to this decision may be directed to Petitions Attorney Cliff Congo at (703) 305-0272.



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for Patent Examination Policy

¹ MPEP 409.03(d).